

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARKUS LOREN COOK, <div style="text-align: right;"><i>Petitioner,</i></div> <div style="text-align: center;">v.</div> <div style="text-align: left;">UNITED STATES OF AMERICA, <div style="text-align: right;"><i>Respondent.</i></div></div>	}	No. 04-74553 ORDER
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On Application for Authorization to File a
Second or Successive 28 U.S.C. § 2255 Motion

Submitted October 14, 2004*

Filed October 22, 2004

Before: Andrew J. Kleinfeld, A. Wallace Tashima and
Ronald M. Gould, Circuit Judges.

COUNSEL

Markus Loren Cook, Florence, Colorado, petitioner, pro se.

United States of America, no appearance.

ORDER

Petitioner has filed an application for authorization to file a second or successive 28 U.S.C. § 2255 motion in the district

*This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

court. Petitioner contends that his sentence is unconstitutional under the Supreme Court's recent opinion in *Blakely v. Washington*, 124 S. Ct. 2531 (2004).

In our decision in *Rees v. Hill*, 286 F.3d 1103 (9th Cir. 2002), we determined that, because the Supreme Court had not mandated that *Apprendi v. New Jersey*, 530 U.S. 466 (2000), be applied retroactively on collateral review, Rees could not meet the requirements in 28 U.S.C. § 2244 for obtaining leave to file a second petition for habeas relief based on an alleged violation of *Apprendi*. *Rees* at 1104; *see also United States v. Sanchez-Cervantes*, 282 F.3d 664 (9th Cir. 2002).

Similarly, the Supreme Court has not made *Blakely* retroactive to cases on collateral review. Petitioner's application for authorization to file a second or successive 28 U.S.C. § 2255 motion in the district court is therefore denied. *See also In re: Dean*, 375 F.3d 1287 (11th Cir. 2004); *United States v. Simpson*, 376 F.3d 679 (7th Cir. 2004).

No petition for rehearing or motion for reconsideration shall be filed or entertained in this case. *See* 28 U.S.C. § 2244(b)(3)(E).

APPLICATION DENIED.

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